THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. Application No. 108/2001
(Old No. 12304 of 1991)

Sushil Kumar & others

Versus

Deen Dayal

Date of decision :- 04th August 2005

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :- August 4, 2005 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the Judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Appl. No.108 of 2001
{Old No. 12304 of 1991}

1. Sushil Kumar S/o Ajit Kumar
2. Smt. Ritu D/o Radhey Lal Goyal
3. Ajit Kumar S/o Sri Krishan Mohan Lal
4. Smt. Sushma W/o Ajit Kumar
   All R/o Mohalla Kahran
   Near Shiv Temple, Dhampur
   District Bijnor
5. Radhey Lal S/o Shyam Lal
   R/o Ojhwani District Budaun ……Applicants

Versus

Deen Dayal S/o Jai Gopal
R/o Mohalla Bambaghera
P.S. Ram Nagar
District Nainital …….Respondents

Date:- 04th August, 2005

Hon'ble J. C. S. Rawat, J.

1. Heard Sri M. K. Goyal learned counsel for the applicants and Sri Dharam Veer learned senior counsel for the respondent.

2. The petition under section 482 Cr.P.C. was filed for quashing the entire proceedings of case No.539/1991 Deen Dayal Vs. Sushil Kumar & others under sections 493, 494, 495, 496, 120-B I.P.C. & 34 I.P.C. pending before the Judicial Magistrate, Kashipur.

3. The factual position in a nutshell is that on 8.4.1991 the respondent-Deen Dayal filed a complaint in the court of Judicial Magistrate, Kahsipur against the applicants under section 120-B, 34, 493, 494, 495, 496 I.P.C. It has been alleged in the complaint that the daughter of the respondent namely, Smt. Mridul was married with the applicant No.1- Sushil Kumar. After the marriage their relations become strained and some

litigations were pending between them. It was further alleged in the complaint that the applicant No.1-Sushil Kumar has remarried with the applicant No.2-Smt. Ritu during the lifetime of his first wife. The applicant No.3-Ajit Kumar and applicant No.4-Smt. Sushma are the father and mother of the applicant No.1-Sushil Kumar respectively. The applicant No.5-Radhey Lal is the father of the applicant No.2-Ritu-the second wife.

4. In support of the case, the respondent-Deen Dayal has himself examined under section 200 Cr.P.C. whereas Sandeep Maheshwari and Smt. Mridul-first wife of Sushil Kumar were examined under section 202 Cr.P.C. Thereafter, the learned Magistrate summoned the applicants under section 493, 494, 495, 496 I.P.C. & 34, 120-B I.P.C. vide order dated 15.5.1991. Feeling aggrieved by this, the applicants have come up before this Court.

5. The learned counsel for the applicants contended that the respondent-Deen Dayal has failed to prove the factum of '*Sattpathi"* and second marriage of the applicant No.1 by cogent and clear evidence before the court below under section 202 Cr.P.C. The learned counsel for the applicants further contended that it is not proved that the second marriage was performed and as such the cognizance order is bad in law. The learned counsel also relied upon the decisions of the Hon'ble Apex Court as well as the High Courts. It is a well settled position of law that at the stage of summoning, this Court has to see whether there is a prima-facie case against the applicants or not. The learned Magistrate or this court while examining the cognizance order should not see as to whether the evidence adduced before the

court below is sufficient for conviction or acquittal of the accused. At this stage, the trial court can only see whether there is sufficient evidence against the accused or not. Section 494 I.P.C. relates to a person who, having or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife.

6. The prosecution has produced the witnesses, who had stated that the applicant No.1-Sushil Kumar contracted a second marriage with Smt. Ritu while the first marriage is still subsisting. It has come in the evidence that a child was born from the wedlock of applicant No.1-Sushil Kumar and applicant No.2-Smt. Ritu. As such, there is sufficient evidence against the accused to proceed under section 494 I.P.C.

7. It was further contended on behalf of the applicants that the applicant No.3-Ajit Kumar and applicant No.4-Smt. Sushma are the father and mother of the applicant No.1-Sushil Kumar respectively. The applicant No. 5-Radhey Lal is the father of the applicant No.2. Therefore, there is no evidence against the applicant No.2, 3, 4 & 5. There is no evidence that the applicant No.3, 4 & 5 had committed an offence of conspiracy. The respondent-Deen Dayal has stated in his evidence under section 200 Cr.P.C. as follows:-

> "सभी मुलजिमान सुसील कुमार, श्रीमती रीतु, अजीत कुमार, श्रीमती सुषमा तथा राधेलाल ने एक राय होकर जानबूझकर मंसूब की तहत षडयत्र रचकर करीब डेढ वर्ष पूर्व रीतू की शादी सुसील कुमार से कर दी जब कि सभी मुलजिमान अच्छी तरह से पता है कि सुशील कुमार की शादी मृदुल पुत्री दीन दयाल रामनगर से हुयी जिससे एक लडकी भी है।"

The relevant portion of the statement recorded under section 200 Cr.P.C. is as follows:-

"अर्सा करीब डेढ साल पहले सभी मुलजिमान सुशील कुमार, श्रीमती रीतु, अजीत कुमार, श्रीमती सुषमा तथा राधेलाल ने एक राय होकर सलाह मशविरा करके रीतू की शादी सुशील कुमार से कर दी जब कि इन सबको अच्छी तरह से पता था कि सुशील कुमार की शादी मृदुल पुत्री दीन दयाल से हुयी है व उनसे एक लड़की भी पैदा हुयी है तथा इनका दानों का तलाक भी नहीं हुआ है फिर भी जानबूझकर मिली भगत से सुशील कुमार रीतु से दूसरी शादी करवा दी। सुशील कुमार की रीतु से एक लड़की भी पैदा हुयी है जो लगभग 6 माह की है।"

8. Perusal of the aforesaid statements and the complaint clearly reveals that the allegations are vague and there is no any other evidence against the applicant No.2, 3, 4 & 5. As such, there is no sufficient ground to proceed against them.

9. It was further contended that the offences punishable under section 493, 496, 495 I.P.C. are not made out. Perusal of the said sections clearly reveals that there is no evidence on record, which shows the prima-facie case is made out under these sections. As such, the cognizance order against the applicant No.2-Smt. Ritu, applicant No.3-Ajit Kumar, applicant No.4-Smt. Sushma and the applicant No.5-Radhey Lal is liable to be quashed.

10. In view of the foregoing discussion, I am of view that the cognizance order dated 15.5.1991 passed by Judicial Magistrate, Kashipur in case No.539/1991 Deen Dayal Vs. Sushil Kumar & others under sections 493, 494, 495, 496, 120-B I.P.C. & 34 I.P.C. is quashed so far as the applicant No.2-Smt. Ritu, applicant No.3-Ajit Kumar, applicant No.4-Smt. Sushma and applicant No.5-Radhey Lal are concerned. There is sufficient evidence against the applicant No.1-husband to proceed under section 494 I.P.C. The court below shall proceed

against the applicant No.1 for the offence under section 494 I.P.C. in accordance with law. However, it is made clear that the cognizance order under sections 493, 495, 496, 120-B I.P.C. and 34 I.P.C. against the applicant-1 is quashed.

11. Therefore, the cognizance order dated 15.5.1991 passed by Judicial Magistrate, Kashipur in case No.539/1991 Deen Dayal Vs. Sushil Kumar & others is modified accordingly.

12. The petition is disposed of accordingly.

(J. C. S. Rawat, J.)

Dated 04.08.2005

LSR